

Congress of the United States
Washington, DC 20515

January 20, 2016

The Honorable Daniel R. Elliot III
Chairman
United States Surface Transportation Board
395 E Street, SW
Washington, DC 2042

The Honorable Ann D. Begeman
Vice Chairman
United States Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Deb L. Miller
Member
United States Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Dear Chairman Elliot, Vice Chairman Begeman and Member Miller:

I am writing to express serious concern over the Canadian Pacific Railway's (CP) unsolicited merger transaction proposal to assume control of Norfolk Southern Corporation (NS). Public reports indicate CP may be contemplating a hostile takeover of significant size and scope that may violate United States Surface Transportation Board (STB) regulations and the underlying Federal statute that prohibits premature exercise of common control by a sovereign rail carrier over another carrier.

A white paper authored by two former STB Chairmen raises significant questions over whether CP's proposed merger transaction and voting trust structure complies with either the letter or the spirit of 49 U.S.C. §§11323-25 and 49 C.F.R. §1180. However, this study was commissioned by NS, which raises the possibility of a conflict of interest.

Accordingly, I am requesting that as the STB conducts its required formal review¹ of the use of voting trusts in proposed major mergers, addressing issues related to unlawful pre-approval control and the public interest, the Board specifically address the following questions:

1. Whether a rail carrier may use a voting trust to begin implementing a merger business plan **prior** to receiving formal STB approval of a proposed merger;
2. Whether STB regulations governing general acquisition procedures require an applicant proposing to use a voting trust first seek and receive approval from the STB that establishing and using the proposed voting trust would not constitute premature, unlawful control, and would be consistent with the public interest; and

¹ U.S. Surface Transportation Board Letter to Illinois Congressional Delegation (January 13, 2015), available at <https://www.stb.dot.gov/stb/docs/MergerLetters/STB%20Response%20to%20Illinois%20Delegation%20Jan.%2013.pdf>

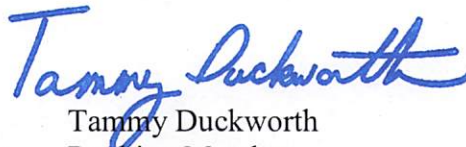
3. If it is accurate that a rail carrier may not assume control of another Class I carrier, by any means, until receiving STB approval of a merger.

STB must be cautious to avoid prejudging issues specific to the particulars of a potential CP and NS merger. However, in light of recent amendments to STB's authorizing statute and conflicting public assertions over the statutory and regulatory requirements governing the use of voting trusts, it is in the public interest for STB to provide clear legal guidance to the public that explains with clarity and detail the precise legal and regulatory requirements that any carrier must comply with in seeking to use a voting trust in any proposed major merger.

As Ranking Member of the Subcommittee on Transportation and Public Assets, I request that STB provide the Subcommittee with an interim briefing addressing these broad legal issues, which transcend any one specific merger. In addition, I urge the STB to develop and publish legal guidance in plain language addressing the questions raised in this letter.

Congress established the STB to protect the public interest, providing it with sole jurisdiction over rail mergers and consolidations. The December 10, 2015 unanimous passage of the Surface Transportation Board Reauthorization Act of 2015 affirmed that Congress intends for the STB to serve as an independent economic regulatory agency that safeguards the public interest by conducting fair and thorough reviews of proposed railroad mergers. Any threat to the STB's authority and independence deserves careful scrutiny, and it is vital that an authoritative source provide clarity and certainty on the statutory and regulatory requirements for using voting trusts in implementing major mergers.

Sincerely,



Tammy Duckworth
Ranking Member
Subcommittee on Transportation and Public Assets
Committee on Oversight and Government Reform

CC:

The Honorable John Mica
Chairman of the Subcommittee on Transportation and Public Assets

The Honorable Jason Chaffetz
Chairman of the Committee on Oversight and Government Reform

The Honorable Elijah Cummings
Ranking Member of the Committee on Oversight and Government Reform